

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.MC.No. 663 of 2004(C)

ST.6060/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, ALUVA

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PETITIONER: 2ND ACCUSED:

MOHANACHANDRAN, S/O. PARAMESWARAN
ELAYATH, AREEKARA HOUSE, RESIDING AT
DEVADATHOM, 7/1235, PRINCE NAGAR,
KOLLAMKUDY MUGAL, KAKKANAD,
THRIKKAKKARA VILLAGE.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)

RESPONDENTS: STATE/COMPLAINANT/1ST ACCUSED:

1. STATE OF KERALA, REP. BY ITS
DIRECTOR OF PROSECUTION, HIGH COURT OF
KERALA, ERNAKULAM.
2. S.I. OF POLICE, KALAMMASSERY
POLICE STATION.
3. SHIBU MATHEW, S/O. MATHEW
VELLAKKOTTIL HOUSE, NEAR AMALAGIRI COLLEGE
MANNANAM KARA, ATHIRAMPUZHA VILLAGE.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 663 OF 2004

Dated this the 20th day of November 2006

ORDER

The petitioner, who is the 2nd accused, has sought for setting aside the case against him, registered as Crime No. 333/2003 which was taken into file as S.T. No. 6060/2003 of the Judicial First Class Magistrate Court-II, Aluva. The police charge is that on 07.09.2003 at 12.30 A.M. in the night while the policemen were engaged on patrol duty, a motor cycle bearing registration No. KL 7/AM-5912 was found being driven in a rash and negligent manner and when the vehicle was stopped it was found that the third respondent/A1 was not having any valid licence and it was also found that the third respondent has consumed alcohol. He was arrested and taken into custody and sent for medical examination to the 2nd accused, Civil Surgeon at Government Hospital, Aluva for examination as to his drunkenness. A2 examined A1 and issued certificate mentioning that A1 has not consumed alcohol. It is the prosecution case that

A2 has deliberately issued the above certificate to shield A1 and conceal evidence and hence he has been charge sheeted for the offence under section 201 IPC. The contention of the revision petitioner, i.e., A2 is that the offence will not lie and that the charge sheet is hit by Section 218 Cr.P.C. It is also contended that A2 has been deliberately charge sheeted to wreak vengeance as he did not oblige the Sub Inspector to issue the drunkenness certificate. It is submitted that A1 was brought by the police and that he had no previous acquittance with A1 and that the certificate was issued by him on the basis of his examination of A1. The police has allegedly sent A1 to another Doctor at General Hospital, Ernakulam who has issued Annexure-2 certificate mentioning that the person has consumed alcohol, but not under its influence.

2. It appears to me that charge sheeting A2, the doctor for not issuing the drunkenness certificate to the effect that the accused has consumed alcohol alleging that he is guilty of the offence under section 201 appears to be extremely rash and irresponsible conduct on the part of the police. There is nothing to show that the officer has conducted any investigation in the

matter to charge sheet A2. The single charge sheet against A1 and A2 for entirely separate offences under section 180 and 185 of the Motor Vehicles Act and section 201 I.P.C. is hit by Section 218 Cr.P.C. Hence the charge against A2/petitioner is hereby quashed. The Crl. M.C is allowed.

K.R. UDAYABHANU, JUDGE.